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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6
7 RICKY LEE GORMAN,

8 Plaintiff(s),

9 v.

10 BRITTANY TAMASO, et al.,

11 Defendant(s).

Case No. 2:22-cv-01678-JAD-NJK

CORRECTED ORDER

12 Plaintiff has filed an amended complaint, Docket No. 18, which the Court screens herein
13 pursuant to 28 U.S.C. § 1915(e)(2).

14 **I. STANDARDS**

15 Federal courts are given the authority to dismiss a case if the action is legally “frivolous or
16 malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from
17 a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

18 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
19 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
20 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723
21 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
22 showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v.*
23 *Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations,
24 it demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause
25 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*citing Papasan v. Allain*, 478 U.S. 265,
26 286 (1986)). The court must accept as true all well-pled factual allegations contained in the
27 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.
28 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do

1 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from
 2 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
 3 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted
 4 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
 5 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

6 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to
 7 amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of
 8 the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*,
 9 70 F.3d 1103, 1106 (9th Cir. 1995).

10 **II. ANALYSIS**

11 The amended complaint raises claims against 23 Defendants for alleged improprieties
 12 related to Plaintiff's arrest, transport to jail, interrogation, criminal defense, and prosecution.¹ The
 13 Court screens the various claims in turn below.

14 **A. Grounds for Arrest**

15 Plaintiff alleges that he was unlawfully arrested without probable cause. *See, e.g.*, Docket
 16 No. 18 at 8 ("The [a]rrest was made without established probable cause"). This claim fails for at
 17 least two reasons.

18 First, the Supreme Court has held that a § 1983 action cannot be used to collaterally attack
 19 a criminal conviction unless the conviction or sentence has been reversed on direct appeal,
 20 expunged by executive order, declared invalid by a state tribunal authorized to make such a
 21 determination, or called into question by a federal court's issuance of a writ of habeas corpus.
 22 *Heck v. Humphrey*, 512 U.S. 477, 484 (1994). In determining whether a claim is barred by *Heck*,
 23 the critical question is whether finding in the plaintiff's favor on a § 1983 claim would necessarily
 24 imply the invalidity of his conviction or sentence. *Szajer v. City of Los Angeles*, 632 F.3d 607,
 25 611 (9th Cir. 2011). There is "no question" that *Heck* bars claims that officers lacked probable
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 28 ¹ Plaintiff separates his allegations into three claims. Construing his amended complaint
 liberally and in an effort to provide clarity, the Court will address his allegations as attempting to
 bring more than three claims.

1 cause to arrest a criminal suspect. *Smithart v. Towery*, 79 F.3d 951, 952 (9th Cir. 1996) (*per*
 2 *curiam*). In this case, Plaintiff was convicted, *see, e.g.*, Docket No. 18 at 16,² and Plaintiff has not
 3 shown that his conviction has been reversed or otherwise called into question. To the contrary,
 4 Plaintiff identifies ongoing habeas efforts that have not to date been resolved in his favor, *id.*
 5 (identifying habeas hearing),³ and Plaintiff's direct appeal was recently rejected by the Court of
 6 Appeals of Nevada, *Gorman v. State*, 540 P.3d 457 (Nev. App. Dec. 28, 2023) (affirming denial
 7 of mistrial request that was predicated on the testimony of the victim's roommate, H. Miller). As
 8 a challenge to whether probable cause existed for his arrest calls into question Plaintiff's
 9 conviction, this claim is barred.

10 Second, the complaint does not sufficiently allege a lack of probable cause at any rate. The
 11 amended complaint alleges that witness Heather Miller alerted authorities to the alleged crime,
 12 was interviewed by the police, and identified Plaintiff in photographic evidence. *See* Docket No.
 13 18 at 14. A witness providing such information to the police can create probable cause for an
 14 arrest. *See Peng v. Mei Chin Penghu*, 335 F.3d 970, 978 (9th Cir. 2003) (explaining that probable
 15 cause may be established by a victim's statements that provide "facts sufficiently detailed to cause
 16 a reasonable person to believe a crime had been committed and the named suspect was the
 17 perpetrator"); *see also Morales v. City of Bellingham*, 2020 WL 7714412, at *4 (W.D. Wash. Dec.
 18 29, 2020) (addressing foundation for probable cause from statements of a putative victim or
 19 eyewitness) (quoting *Gramenos v. Jewel Cos.*, 797 F.2d 432, 439 (7th Cir. 1986)). Plaintiff's
 20 theory of a lack of probable cause appears to hinge on his conclusory assertion that the
 21 photographic identification was conducted in a manner that was "impermissibly suggestive." *Id.*
 22 That type of label or legal conclusion does not suffice to state a claim. *E.g., Iqbal*, 556 U.S. at
 23 678.⁴

24
 25 ² It appears that Plaintiff may not have been convicted on all charges, but he was convicted.
 26 *See, e.g.*, Docket No. 18 at 16 (acknowledging the "single charge that I have been convicted of").

27 ³ Plaintiff alleges that his conviction has been called into question by his seeking habeas
 28 relief, but he has not shown that habeas relief has been granted. *See, e.g.*, Docket No. 18 at 16.

⁴ Plaintiff similarly fails to state a claim with respect to the searches conducted incident to
 his arrest that were allegedly performed without probable cause. *See, e.g.*, Docket No. 18 at 11.

1 Accordingly, Plaintiff has not stated a colorable claim arising out of his allegedly unlawful
 2 arrest.⁵

3 B. Manner of Arrest

4 Plaintiff alleges that he was arrested by Defendant Gomez at gunpoint, which the Court
 5 construes as an excessive force claim. *See* Docket No. 18 at 12. In evaluating such a claim, courts
 6 must balance the “nature and quality of the intrusion” on a person’s liberty with the “countervailing
 7 governmental interests at stake” to determine whether the force used was objectively reasonable
 8 under the circumstances. *Graham v. Connor*, 490 U.S. 386, 396 (1989). Relevant factors include
 9 “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of
 10 the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by
 11 flight.” *Id.* Hence, a colorable claim for excessive force is not pled by simply alleging an arrest
 12 at gunpoint; the plaintiff must allege facts showing that the officer’s display of his weapon was
 13 excessive under the circumstances. *See, e.g., Ibeabuchi v. Eggleston*, 2019 WL 11504658, at *6
 14 (D. Ariz. Feb. 26, 2019).

15 In this case, Plaintiff alleges that he was arrested at gunpoint while he was “sitting in [a]
 16 parked car” with his girlfriend at his family’s home. Docket No. 18 at 12. While such
 17 circumstances may be pertinent to an excessive force claim in this context, the complaint otherwise
 18 lacks the factual allegations necessary to discern a colorable claim for excessive force. The Court
 19 is particularly mindful of Plaintiff’s allegations elsewhere that he was arrested on the serious crime
 20 of kidnapping, as well as other violent offenses. *See, e.g.*, Docket No. 18 at 6; Docket No. 1-1 at
 21 2 (alleging that Plaintiff was arrested on charges of kidnapping, sexual assault, and “various
 22 allegations involving deadly weapons”).⁶ The alleged facts on which Plaintiff’s excessive force
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24 ⁵ Plaintiff alleges that Defendants Favela and Lee improperly arrested him without
 25 probable cause on March 23, 2022, and November 17, 2022, respectively, Docket No. 18 at 17,
 26 based on amendments to the criminal charges brought, *see id.* at 16-17. For the reasons discussed
 herein, these false arrest claims fail both under the *Heck* bar and for failing to sufficient plead a
 lack of probable cause at any rate.

27 ⁶ The Court may consider factual allegations that Plaintiff made in prior complaints. *See,*
 28 *e.g., Anderson v. Valenzuela*, 2018 WL 3433296, at *1 n.1 (D. Nev. June 14, 2018), *adopted*, 2018
 WL 3429656 (D. Nev. July 16, 2018).

1 claim are predicated are not sufficient to state a colorable claim given the need to evaluate all of
 2 the pertinent circumstances.

3 Accordingly, Plaintiff has not stated a colorable claim arising out of the manner of his
 4 arrest.

5 C. Alleged Post-Arrest Delay

6 Plaintiff alleges that he was driven around by various officers (including Defendants
 7 Gomez, Ness, Longwell, Smith, Larsen, and Tamaso) prior to being questioned by Defendant
 8 Tamaso about seven hours after his initial arrest, before then having a hearing in front of a judicial
 9 officer. *See id.* at 8, 11, 14, 18-20. “To implement the Fourth Amendment’s protection against
 10 unfounded invasions of liberty and privacy, the Court has required that the existence of probable
 11 cause be decided by a neutral and detached magistrate whenever possible.” *Gerstein v. Pugh*, 420
 12 U.S. 103, 112 (1975). “[S]ome delays are inevitable,” however, and the Supreme Court has
 13 instructed that “judicial determinations of probable cause within 48 hours of arrest will, as a
 14 general matter, comply with the promptness requirement. *County of Riverside v. McLaughlin*, 500
 15 U.S. 44, 55-56 (1991). Police are not prohibited from investigating the suspect during this interim
 16 period. *See Kanekoa v. City & Cnty. of Honolulu*, 879 F.2d 607, 612 (9th Cir. 1989). Police may
 17 not, however, delay a probable cause determination to gather evidence to justify the arrest or for
 18 another impermissible purpose. *See Smith v. City & Cnty. of Honolulu*, 887 F.3d 944, 950 (9th
 19 Cir. 2018).

20 Plaintiff has not stated a colorable claim based on a delay in a probable cause
 21 determination. First, Plaintiff has not stated when the probable cause hearing was held. That
 22 information is certainly a critical piece of the puzzle. Second, Plaintiff is inconsistent about the
 23 circumstances. On the one hand, Plaintiff alleges he was arrested because witness Heather Miller
 24 alerted authorities to the alleged crime, was interviewed by the police, and identified Plaintiff in
 25 photographic evidence. *See* Docket No. 18 at 14 (alleging that the information supplied by Miller
 26 “caus[ed] for [Plaintiff] to be illegally arrested”). As explained above, Plaintiff has not alleged
 27 sufficiently why probable cause was lacking given that information known to the police before his
 28 arrest. On the other hand, Plaintiff alleges that there was post-arrest delay for the purpose of

1 obtaining a warrant and suggests that this time was used to collect evidence that could establish
 2 probable cause. *See, e.g.*, Docket No. 18 at 11, 19. Plaintiff has not clearly identified what
 3 evidence (if any) was allegedly collected by the police during this interim period and whether that
 4 evidence was then used to establish probable cause and/or introduced at trial.⁷

5 Accordingly, Plaintiff has not stated a colorable claim arising out of alleged post-arrest
 6 delay.⁸

7 D. Alleged *Miranda* Violations

8 The amended complaint includes ubiquitous allegations of *Miranda* violations. Plaintiff
 9 alleges that a number of Defendants (including at least Gomez, Vezina, Longwell, Larson, Ness,
 10 McCrimmon, Smith, and Tamaso) violated his constitutional rights by failing to read him his
 11 *Miranda* warning or failing to honor his request to speak with an attorney. *See, e.g.*, Docket No.
 12 18 at 10-11. The United States Supreme Court has reiterated that the rules adopted in *Miranda* are
 13 prophylactic in nature. *Vega v. Tekoh*, 597 U.S. 134, 151 (2022). The remedy for a *Miranda*
 14 violation comes in the form of a defendant seeking exclusion of unwarned statements at his
 15 criminal trial; a *Miranda* violation does not give rise to a cognizable cause of action under 42
 16 U.S.C. § 1983. *Vega*, 597 U.S. at 151-52. Because a *Miranda* violation is not redressable through
 17 this § 1983 civil rights case, Plaintiff's claims based on the allegations of such violations are
 18 subject to dismissal.

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22 ⁷ This would appear to be a “heads I win, tails you lose” scenario. Plaintiff must allege
 23 that this interim period was used improperly to collect evidence to be introduced against him. *See*
 24 *Smith*, 887 F.3d at 950. If that were the case, however, the typical remedy would be excluding
 25 such evidence from trial, *see Anderson v. Calderon*, 232 F.3d 1053, 1071-72 (9th Cir. 2000),
overruled in part on other grounds, *Bittaker v. Woodford*, 331 F.3d 715, 728 (9th Cir. 2003), which
 26 would mean that the *Heck* bar would apply to this claim if the evidence was in fact eventually used
 27 against Plaintiff, *see, e.g.*, *Johnson v. Los Angeles Police Dep't*, 2016 WL 836267, at *4 (C.D.
 28 Cal. Jan. 5, 2016), *adopted*, 2016 WL 837893 (C.D. Cal. Mar. 3, 2016), *aff'd*, 693 Fed. Appx. 716
 (9th Cir. 2017).

28 ⁸ Plaintiff alleges he was discriminated against based on race and religion during this
 29 process. *See, e.g.*, Docket No. 18 at 19. For example, Plaintiff alleges that he found the music
 30 played in the car to be “demonic.” *Id.* Plaintiff has not stated a colorable claim based on these
 31 conclusory allegations.

1 E. Conditions During Questioning

2 Plaintiff alleges that Defendant Tamaso and Defendant Goldberg engaged in wrongful
 3 conduct during his interrogation. Docket No. 18 at 21. Coercive interrogation techniques may
 4 give rise to a civil rights claim for violation of the substantive due process under the Fourteenth
 5 Amendment. *Stoot v. City of Everett*, 582 F.3d 910, 928 (9th Cir. 2009).⁹ “The standard for
 6 showing a Fourteenth Amendment substantive due process violation, however, is quite
 7 demanding.” *Id.* Such a claim is cognizable only if the alleged abuse of power “shocks the
 8 conscience” and “violates the decencies of civilized conduct.” *Id.* (quoting *County of Sacramento*
 9 *v. Lewis*, 523 U.S. 833, 846 (1998)).

10 Plaintiff alleges that he was sexually assaulted during his interrogation. In particular,
 11 Plaintiff alleges that Tamaso oversaw Plaintiff’s interrogation and pressured Plaintiff into
 12 submitting to physical inspection. *See, e.g.*, Docket No. 18 at 21. Plaintiff alleges that Goldberg
 13 then assaulted him by inserting an object into his penis, scrotum, and mouth. Docket No. 18 at
 14 21.¹⁰ From the context of the other allegations in the complaint, it appears that Plaintiff may be
 15 referring to DNA testing, *see* Docket No. 18 at 28; *see also* Docket No. 1-1 at 3, and that he may
 16 have consented to that testing, *see* Docket No. 18 at 26; *see also* Docket No. 1-1 at 3. Nonetheless,
 17 taking these allegations as true for purposes of screening, *see Iqbal*, 556 U.S. at 679, and construing
 18 the allegations in Plaintiff’s favor, *see Hebbe*, 627 F.3d at 340, the Court finds that these allegations
 19 state a colorable claim against Tamaso and Goldberg.¹¹

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22 ⁹ Plaintiff does not appear to allege that his was coerced into confessing during this
 23 interrogation, so it would not appear that his claim falls under the Fifth Amendment. *See, e.g.*,
 24 *Crowe v. Cnty of San Diego*, 608 F.3d 406, 427 (9th Cir. 2010) (explaining that a Fifth Amendment
 25 coercive interrogation claim requires a coerced confession that is used against the defendant in
 26 criminal proceedings).

27 ¹⁰ Plaintiff raises other allegations regarding his treatment during the interrogation,
 28 including that Tamaso allegedly did not give Plaintiff privacy while using the restroom and
 Tamaso allegedly did not coordinate medical treatment immediately for some cuts on Plaintiff’s
 body. *See, e.g.*, Docket No. 18 at 20-21.

29 ¹¹ The Court screens the complaint without the benefit of the adversarial process. *Buchheit*
 30 *v. Green*, 705 F.3d 1157, 1161 (10th Cir. 2012). Nothing in this order should be construed as
 precluding the filing of a motion to dismiss.

1 F. Alleged Ineffective Assistance – Private Defense Attorneys

2 Plaintiff seeks to bring claims against two private defense attorneys (Daniel Hill and
 3 Monique McNeill) alleging that they provided ineffective assistance during his criminal
 4 prosecution in state court. *See, e.g.*, Docket No. 18 at 22-23. These claims fail for a variety of
 5 reasons.

6 First, a finding that a party was deprived effective assistance of counsel in a state court
 7 criminal proceeding would necessarily imply the invalidity of his conviction, so a civil rights claim
 8 predicated on alleged ineffective assistance of counsel is subject to the *Heck* bar discussed above.
 9 *Trimble v. City of Santa Rosa*, 49 F.3d 583, 585 (9th Cir. 1995) (*per curiam*).

10 Second, a threshold requirement for proceeding with any § 1983 claim is that the defendant
 11 acted “under color of state law” with respect to the alleged deprivation of the plaintiff’s
 12 constitutional rights. *West v. Atkins*, 487 U.S. 42, 48 (1988). It is settled law that a private defense
 13 attorney does not act under color of state law for § 1983 purposes, even if appointed as counsel by
 14 the courts. *Deleo v. Rudin*, 328 F. Supp. 2d 1106, 1111 (D. Nev. 2004).

15 Accordingly, Plaintiff has not stated a colorable claim against his private attorneys.¹²

16 G. Alleged Ineffective Assistance – Public Defender Attorneys

17 Plaintiff seeks to bring claims against Public Defenders (Ava Bravo and Jordan Savage)
 18 alleging that they provided ineffective assistance during his criminal prosecution in state court.
 19 *See, e.g.*, Docket No. 18 at 28-30. As discussed above, the *Heck* bar precludes a claim that Plaintiff
 20 was provided with ineffective assistance in the criminal proceedings that led to his conviction.
 21 *Trimble*, 49 F.3d at 585. Moreover, it is settled law that a public defender is not acting “under
 22 color of state law” when performing the traditional functions of defense counsel in an underlying
 23 criminal proceeding. *Miranda v. Clark Cnty., Nev.*, 319 F.3d 465, 468 (9th Cir. 2003) (*en banc*).
 24 Accordingly, Plaintiff has not stated a colorable claim against his Public Defenders.

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 27 ¹² Plaintiff has indicated that he is currently seeking *habeas* relief in state court. Docket
 28 No. 18 at 16. The dismissal of his civil rights claims in this case are without prejudice to pursuing
habeas relief as appropriate. *See Trimble*, 49 F.3d at 586.

1 H. Alleged Ineffective Assistance – County Manager

2 Plaintiff seeks to bring a claim against County Manager Yolanda King, alleging that she
 3 appointed the public defenders identified above and that she failed to take corrective action for the
 4 alleged ineffective assistance provided by those public defenders after Plaintiff wrote her a letter.
 5 Docket No. 18 at 30-31. The *Heck* bar applies to a claim that a supervisor in the Public Defender
 6 Office improperly assigned a deputy public defender to a criminal defendant's case, who then
 7 allegedly provided ineffective assistance. *Chang v. Coffee*, 2016 WL 4708026, at *2 (D. Nev.
 8 Feb. 1, 2016), *adopted*, 2016 WL 4705448 (D. Nev. Sept. 7, 2016).¹³ The *Heck* bar also applies
 9 to a claim that a supervisor in the Public Defender Office failed to take appropriate action, like
 10 assigning new attorneys, upon receiving a complaint from a criminal defendant that he was being
 11 provided ineffective assistance. *Id.* Accordingly, Plaintiff has not stated a colorable claim against
 12 County Manager Yolanda King.

13 I. Malicious Prosecution

14 Plaintiff seeks to bring claims against the Deputy District Attorney who prosecuted him
 15 (Hagar Trippiedi), along with District Attorney himself (Steven Wolfson) and the Attorney
 16 General for the State of Nevada (Aaron Ford). *See, e.g.*, Docket No. 18 at 15-17. Prosecutors are
 17 protected by immunity for their actions associated with their prosecutorial functions. *Botello v.*
 18 *Gammick*, 413 F.3d 971, 975-76 (9th Cir. 2005). Such immunity applies regardless of allegations
 19 of malice, bad faith, or conspiracy. *Ashelman v. Pope*, 793 F.2d 1072, 1077-78 (9th Cir. 1986) (*en*
 20 *banc*). Plaintiff's allegations involve run-of-the-mill assertions of vindictive prosecution, such as
 21 an allegation that Trippiedi amended the charges in retaliation for Plaintiff refusing to accept a

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 25 ¹³ As noted above, a public defender is not acting under "color of state law" in representing
 26 a civil rights plaintiff in an underlying criminal proceeding. *Miranda*, 319 F.3d at 468.
 27 Nonetheless, claims against the public defender are not precluded if they arise out of an
 28 administrative function. *Id.* at 469. For purpose of this order, the Court assumes without deciding
 that the assignment of a deputy public defender to a particular criminal defendant's case is
 "administrative" in nature.

1 plea offer or to waive his preliminary hearing. *See, e.g.*, Docket No. 18 at 15-17.¹⁴ Such claims
 2 are barred by prosecutorial immunity.

3 Plaintiff acknowledges this immunity and attempts to circumvent it by seeking declaratory
 4 relief as to the alleged malicious prosecution. *See, e.g.*, Docket No. 18 at 16. Even were such an
 5 avenue otherwise viable, however, the *Heck* bar applies to a claim for malicious prosecution.
 6 *Guerrero v. Gates*, 442 F.3d 697, 703 (9th Cir. 2006).

7 Accordingly, Plaintiff has not stated a colorable claim for malicious prosecution.

8 J. Las Vegas Metropolitan Police Department

9 Plaintiff names the Las Vegas Metropolitan Police Department as a Defendant. *See* Docket
 10 No. 18 at 3. The Ninth Circuit has held that, pursuant to Federal Rule of Civil Procedure 17(b),
 11 state law determines the issue of whether a department of a municipality may sue or be sued. *See,*
 12 *e.g.*, *Streit v. Cty. of Los Angeles*, 236 F.3d 552, 565 (9th Cir. 2001). “Nevada does not grant
 13 authorization of a police department to sue or be sued.” *Cerros v. N. Las Vegas Police Dep’t*, 2008
 14 WL 608641, at *9 (D. Nev. 2008). Accordingly, Plaintiff has not stated a colorable claim against
 15 the Las Vegas Metropolitan Police Department.

16 K. Clark County

17 Plaintiff names Clark County as a Defendant. Docket No. 18 at 5. “Municipal bodies are
 18 not liable under § 1983 unless they themselves ‘cause[] the constitutional violation at issue.’”
 19 *Carvajal v. Clark Cnty.*, 539 F. Supp. 3d 1104, 1118 (D. Nev. 2021) (quoting *City of Canton v.*
 20 *Harris*, 489 U.S. 378, 385 (1989)). The Supreme Court has held that liability extends to municipal
 21 bodies only when the constitutional violation was the result of its policy, practice, or custom, or a
 22 decision-making official directed or ratified the identified conduct. *Monell v. Dep’t of Soc. Servs.*
 23 *of City of N.Y.*, 436 U.S. 658, 690 (1978). The Court has not identified any allegations in the
 24 amended complaint specific to Clark County, let alone allegations of a policy, practice, or custom.
 25 Accordingly, Plaintiff has not stated a colorable claim against Clark County.

26 _____
 27 ¹⁴ Plaintiff also alleges that these defendants were responsible for his arrests that resulted
 28 from the amendment of the charges, which amendment would be within the prosecutorial function.
See Docket No. 18 at 16-17. Moreover, as noted above, the *Heck* bar applies to Plaintiff’s claims
 that his arrests occurred without probable cause.

1 L. State of Nevada

2 Plaintiff names the State of Nevada as a Defendant. Docket No. 18 at 5. States are not
 3 considered “persons” for purposes of claims brought pursuant to 42 U.S.C. § 1983. *Will v. Mich.*
 4 *Dept. of State Police*, 491 U.S. 58, 71 (1989). States are also immune from federal damages claims
 5 pursuant to the Eleventh Amendment of the United States Constitution. *Franceschi v. Schwartz*,
 6 57 F.3d 828, 831 (9th Cir. 1995) (*per curiam*). Accordingly, Plaintiff has not stated a colorable
 7 claim against the State of Nevada.

8 M. Jason Lafreniere

9 Plaintiff names Jason Lafreniere as a Defendant. Docket No. 18 at 3. The Court has not
 10 identified any allegations in the amended complaint regarding any conduct of Lafreniere.
 11 Accordingly, Plaintiff has not stated a colorable claim against Lafreniere.

12 N. Leave to Amend

13 As discussed above, Plaintiff has stated a colorable against Tamaso and Goldberg regarding
 14 the conditions of his interrogation, but Plaintiff has otherwise failed to state a colorable claim on
 15 any other basis. Hence, the Court must decide whether to afford Plaintiff leave to amend. A
 16 plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies,
 17 unless it is clear that the deficiencies can not be cured by amendment. *Cato*, 70 F.3d at 1106.
 18 Leave to amend is not automatic, however, and “the district court’s discretion to deny leave to
 19 amend is particularly broad where plaintiff has previously amended the complaint.” *City of Los*
 20 *Angeles v. San Pedro Boat Works*, 635 F.3d 440, 454 (9th Cir. 2011) (quoting *Ascon Props., Inc.*
 21 *v. Mobile Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989)).

22 Whether to grant leave to amend is a close question in this case. The bulk of Plaintiff’s
 23 amended complaint fails as a matter of law and simply cannot be cured through amendment.
 24 Moreover, Plaintiff has previously been afforded an opportunity to amend the complaint and was
 25 specifically cautioned to ensure that he included a fulsome and clear factual discussion of the
 26 alleged violations in any amended complaint. *See* Docket No. 14 at 2-3, 6-7. Nonetheless, the
 27 Court will afford Plaintiff one final opportunity to amend the complaint if he believes that any of
 28 the above deficiencies can be cured.

1 **III. CONCLUSION**

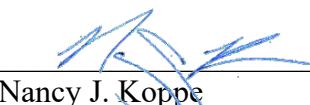
2 For the reasons explained above, Plaintiff has stated a colorable claim against Tamaso and
3 Goldberg regarding the conditions of his interrogation, but Plaintiff has otherwise failed to state a
4 colorable claim on any other basis. Except for the interrogation claim, Plaintiff's amended
5 complaint is **DISMISSED** with leave to amend.

6 Plaintiff will have until **June 17, 2024**, to file a second amended complaint, if the noted
7 deficiencies can be corrected. If Plaintiff chooses to amend the complaint, Plaintiff is informed
8 that the Court cannot refer to a prior pleading (i.e., the original complaint) in order to make the
9 amended complaint complete. This is because, as a general rule, an amended complaint supersedes
10 the original complaint. Local Rule 15-1(a) requires that an amended complaint be complete in
11 itself without reference to any prior pleading. Once a plaintiff files an amended complaint, the
12 original complaint no longer serves any function in the case. Therefore, in an amended complaint,
13 as in an original complaint, each claim and the involvement of each Defendant must be sufficiently
14 alleged.

15 **Failure to file a second amended complaint by the deadline set above will result in the**
16 **recommended dismissal of the claims and Defendants, except as to the claim against Tamaso**
17 **and Goldberg regarding the conditions of Plaintiff's interrogation.**

18 IT IS SO ORDERED.

19 Dated: May 15, 2024

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21 Nancy J. Koppe
22 United States Magistrate Judge

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